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IN THE

Supreme Court of the United States

October Term, 1967

No. 494

RALPH CARNES,

Petitioner.

vs.

THE STATE OF GEORGIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of Georgia, entered in the above case on March 14, 1967, and finally affirmed by the Supreme Court of Georgia in which a Petition for Certiorari was requested on May 25th, 1967.

OPINIONS BELOW.

The opinion of the Court of Appeals of the

State of Georgia is reported in 115 Ga. App. 387. A copy of that opinion is attached hereto in Appendix I.

No opinion was written by the Court of Appeals of Georgia denying the Motion for Reconsideration and no opinion was written by the Supreme Court of Georgia denying Petitioner's Motion for Writ of Certiorari, or his Motion for Reconsideration of the Supreme Court's ruling denying the Petition for Writ of Certiorari.

JURISDICTION.

Petitioner was tried and convicted on March 15th, 1966. A Motion for New Trial was filed on that date and amended on July 28th, 1966. The trial judge over-ruled the Motion for a new trial on October 5th, 1966, and an appeal was taken on October 31st to the Court of Appeals of the State of Georgia. The Court of Appeals announced its decision on February 24th, 1967. A Motion for Reconsideration was filed on March 14th, 1967, which Motion for Reconsideration was denied.

A Petition for Certiorari was then filed in the Supreme Court of Georgia on April 13th, 1967. The Petition for Certiorari was denied and a Motion for Reconsideration of the denial of the Petition for Certiorari was filed on May 14th, 1967. A Motion for Reconsideration was denied on May 18th, 1967, and a Remittiture transmitted to and received by the Court of Appeals of the State of

Georgia, finally adjudicating the case on May 25th, 1967.

A copy of the opinion of the Court of Appeals, which was the only written opinion, is attached to the Petition in the Appendix hereto. The jurisdiction of this court is invoked under *28 U.S.C. § 1527 (3)*.

QUESTIONS PRESENTED.

Ralph Carnes, the Petitioner, was indicted for the offense of receiving stolen property on March 8th, 1966. He was unable to obtain counsel until noon on March 12th, 1966. Despite protest by his counsel that there had been inadequate time to prepare a defense and protest that a trial would deny Carnes his constitutional rights to assistance of counsel, he was placed on trial and convicted on March 15th, 1966.

During the trial the court allowed into evidence admissions and confessions signed by the Defendant, after interrogation by the chief prosecuting witness, conducted in the presence of the Sheriff of Coweta County, Georgia. The confessions were made in the presence of the Sheriff aforesaid, after he had accused the defendant of being involved in property that had been stolen. The confessions were made in the presence of the Sheriff of Coweta County, after he had called the chief prosecuting witness and local officers to Mr. Carnes' store and then informed the defendant Carnes that

he was out of his jurisdiction, but that it would be better if he would tell the truth. None of the facts about the admissions and confessions made by the defendant to the chief prosecuting witness, in the presence of the Sheriff of Coweta County, Georgia, were known to the defense counsel before trial because there had been inadequate time to interview the State's witnesses. The confessions were taken in the presence of the Sheriff of Coweta County at a time when Defendant had not been informed of his right to counsel or his constitutional rights under the Fourteenth Amendment as construed by this court.

ISSUES.

1) Whether admissions and confessions made by a defendant during questioning by the chief prosecuting witness at the instance, request and in the presence of the arresting Sheriff, who had already accused the defendant of being involved in a crime, are admissible when the Sheriff who is present and aware of the interrogation, does not inform the defendant of his constitutional rights to counsel, to remain silent and that his statements may be used against him.

2) Whether the rule announced by this court in *Miranda v. Arizona* may be circumvented by allowing precustodial interrogation to be conducted by a chief prosecuting witness in the presence and under the direction of a State officer.

3) Whether the Defendant, Ralph Carnes, was denied due process of law and effective assistance of counsel when he was placed on trial on a Tuesday morning following his representation on the preceding Saturday morning considering the nature and facts of his defense.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Amendment XIV § 1, United States Constitution:

> "All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deprive any person within its jurisdiction of the equal protection of the laws."

STATEMENT.

Ralph Carnes was indicted on March 8th, 1966, by the Grand Jury of Coweta County for the offense of receiving stolen goods. He was unable to obtain counsel until the following Saturday, March 12th, 1966, at 12:00 o'clock P.M. He was subsequently

placed on trial on Tuesday morning, March 15th, 1966. Upon the call of the case, the Defense Counsel, protested there had been insufficient time to prepare the case for trial and moved the court to continue the case on the grounds that to place the Defendant on trial, when the defense counsel was totally unprepared, would effectively deny the Defendant benefit of counsel during the trial. The motion for a continuance was made prior to entering a plea or appearing in the case in any manner as shown in the record. (R-43)

The defense counsel stated, in summary, that the results of the investigation that he made and the work that he had completed with reference to defending Mr. Carnes indicated that the defense which defendant could put forth was that he was not guilty of the crime of receiving stolen goods because he had no reason to believe at the time the goods were received that they had been stolen. (R-43)

Defense counsel stated that he intended to prove that the price paid for the goods was not incommensurate with prices normally paid for salvage merchandise.[1] He further stated that he was unfamiliar with the salvage business and that he had spent his time preparing on the legal points of the case, but that if he were granted additional

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1. Salvage merchandise describes merchandise of the type purchased by defendant, i.e. groceries that have been damaged or packages that have been damaged.

time, he was assured by the defendant, that he could bring witnesses before the court who could testify to the fact that the prices paid by the defendant were not such prices that would make the transaction an unusual one in the salvage field. (R-44)

Defense counsel further urged his motion for continuance because he had used all the time, since employment, in researching the law of the case and discussing the matter with his client and because of his work in this direction and the intervening weekend when the public offices containing the indictment were closed, he had had no time to ascertain the identity or interview the State's witnesses in order that he could know what evidence would be presented against his client.

Defense counsel further accounted to the trial court for all his time from the time of employment until the time of the trial and these facts are shown in the record (R-45-47) In essence, the account showed that all the useable time between the time of employment on Saturday and the time of trial on Tuesday morning was used in preparing the case, but despite these efforts the defense counsel enumerated several items that remained to be completed and stated that without these matters being completed, his defense of Ralph Carnes would be an uneducated and unprepared one and would effectively deny defendant Carnes the right of counsel. (R-44)

Those items enumerated by defense counsel as having been uncompleted because of lack of time

between the time of his employment and the time of trial were as follows: (R-44)

1) The State's witnesses were not examined by defendant's counsel before trial, for lack of sufficient time to accomplish the same.

2) All the State's witnesses were not known or identified by defendant's counsel and were not interviewed.

3) Defendant was not allowed sufficient time to produce witnesses known to the Defendant, Ralph Carnes, who had had similar legal transactions in the salvage business and who could have shown that there was no guilty knowledge on the part of Ralph Carnes because of the disparity in the price paid by Ralph Carnes for the goods and a normal market price. Witnesses who could have testified to this effect were available, but because of lack of time, the defense counsel was unable to locate them and produce them at the time of the trial.

Defense counsel's motion for a continuance on all the grounds set forth in the record were overruled and the defendant was required to plead and go to trial despite his protest. (R-48) Upon the trial of the case, the testimony showed that Ralph Carnes, on February 7th, 1966, purchased from persons unknown, certain goods, which were alleged to have been stolen from Alterman Foods Incorporated. The uncontradicted evidence showed that two individuals came to the place of business of Ralph Carnes on February 7th, 1966, and offered to sell him "salvage" merchandise. (R-53) Mr.

Carnes admitted buying the goods, but claimed that he had no knowledge that the goods were stolen and that the transaction was not unlike other transactions that he had in buying salvaged or damaged merchandise. i. e. He did not knowingly buy stolen goods.

The case presented by the State against Ralph Carnes consisted in the main of testimony by the Sheriff of Coweta County, Lamar Potts, stating that he went to Mr. Carnes' store on February 10th and said to Mr. Carnes that he was on the wrong side of the river and that he would wait there for the Carroll County Sheriff's office or some of them to come over. (R-87) He told Mr. Carnes that he was waiting there because a truck was stolen in Atlanta on Monday and that the truck was unloaded at Buck Dyers' place over there at Tony Vaughn's and that Mr. Carnes had brought the stuff on over here. (R-88) Mr. Potts stated that he called Mr. Hunt, the chief prosecuting witness, and an employee of Alterman Foods to Mr. Carnes' store on that date, (R-88), and Mr. Hunt testified that he discussed the matter with Mr. Carnes at that time, but "didn't say anything to him for some little bit after they (apparently referring to the officers) got a search warrant from Carrollton". (R-76) Mr. Hunt then conducted an interrogation of Mr. Carnes and had Mr. Carnes sign an inventory of the material he had received to the following effect:

> "This is to certify that all the merchandise on the invoice was stolen from Alterman Foods and purchased by me." (R-53)

At no time was there any evidence introduced showing that Mr. Carnes was advised of any of his procedural rights or that the evidence was introduced voluntarily or without being induced by the slightest hope of benefit or remotest fear of injury.

Counsel for the defendant urged, upon the trial court, that a Motion for Continuance should be granted in order that defendant would not be denied effective assistance of counsel during the trial. This Motion for a Continuance was over-ruled and the same objection was made again to the trial court in its amended motion for new trial. (R-23). The objection was further urged on the Court of Appeals of Georgia (R-121) (R-153) and in defendant's Petition for Certiorari to The Supreme Court of Georgia.

The objection was made by defense counsel that the signed confessions should not be allowed into evidence because they were made at the time Mr. Carnes did not have counsel and at a time when the proceedings against Mr. Carnes had become accusatory. (R-96) The objection was further made that the confessions should not be allowed into evidence because they were signed by Mr. Carnes while he was under the impression that if he assisted that he would not be prosecuted. All of these facts, of course, would not have taken place had Mr. Carnes been offered the assistance of counsel, or informed of his procedural rights.

REASONS FOR GRANTING THE WRIT.

At this stage in history, there is no question that every person accused with a crime is entitled to a counsel at all critical stages of the proceedings which are designed to bring him to trial. See *Hamockton v. Alabama* 368 *U. S.* 52, 7 *L.Ed.* 114; *Gideon v. Wainwright*, 372 *U.S.* 335, 9 *L. Ed.* 799; *White v. Maryland*, 373 *U.S.* 59. In the recent case of *Escabedo v. Illinois*, it was held that any stage of the proceeding is critical if the denial of counsel at that particular time caused the defendant to prejudice himself by not having had an attorney and thus deprive him of due process of law. The case at bar falls well within the admonition of the above entitled cases, and such cases as *Massiah v. United States*, 377 *U.S.* 204, and the admonition contained within *Lee v. United States*, 322 *Fed. Reporter 2d*, 770, 778. In the case at bar, it is obvious that the Defendant should have been apprised of his right to counsel before he was questioned and asked to sign statements that were later allowed into evidence against him. The statements admitted into evidence amounted to confessions of guilty knowledge on his part, that he knew the goods received by him were stolen.

If the decision of the Court of Appeals of the State of Georgia is allowed to stand, it will amount to the granting of license to police officers to have prosecuting witnesses conduct interrogations of accused individuals and thereby effectively circumvent the guidelines laid down so carefully by this Court in the *Miranda* decision.

CONCLUSION.

Counsel for the Petitioner respectfully submits that the Petition for the Writ of Certiorari should be given favorable consideration by the Court. Counsel has lived with this case, has been more active in it, and participated in it more than any other individual involved, and has a greater insight as to all of the events which have transpired than any other individual, simply by the nature that he has been more involved and longer involved than anyone else. While recognizing those who violate the law, or apparently do so, must be punished, it is respectfully submitted that the trial of this case in the hasty manner that it was done did not allow this man a fair trial, because of the short time given him and his counsel to prepare. While the record may not be as complete as it should, and while there may be other technicalities as to the way objections were made or the record presented on appeal, it is respectfully submitted that these deficiencies are mute testimony of the fact that counsel was not adequately prepared, did not have time to ascertain what testimony would be presented against his client, and did not have time to bring in the witnesses that the Defendant wished brought before the court. Reversal of this case at this stage will illustrate to defendants that they have a right to a speedy trial, if they so elect, but if they wish they may have such time to prepare as is necessary and reasonable. Further, the decision will illustrate that trial judges must exercise the discretion vested in them with wisdom and consideration for the case in point, and with respect to the particular facets and aspects of

the case that is presented before them at the time of the motion for continuance. To allow this decision to stand gives trial judges cart-blank authority to deny well founded motions, based on sound reason and logic, and necessary for the proper preparation of *all* issues, both factual and legal, that are necessary to present the defendant's side of the case. It has long been appalling to me that a civil case involving $30.00 is more respected as to the amount of time that a defendant is given to answer than a criminal case involving a man's freedom, when it is an absolute necessity that he be given time to prepare.

If the decision of the Georgia Court of Appeals stands, it will also allow peace officers to circumvent procedural safeguards that have arisen by virtue of the Constitution of the United States and the subsequent interpretative decisions thereof. In essence, Ralph Carnes was accused, by Sheriff Potts of Coweta County, of receiving stolen property, was told that it would be good to cooperate, although the sheriff himself had no authority, and then subjected Carnes to extensive questioning which resulted in incriminating statements and confessions. If this type of procedure is allowed, after one has been accused of a crime, without the defendant being informed of his right to counsel and informed of his other rights, the meaning of the cases cited, and the procedural safeguards set up by the Constitution are a sham and completely meaningless.

It is respectfully submitted that the rulings of the Georgia Court of Appeals shall be reversed. If the

conviction is reversed, this individual still stands subject to trial in the Coweta Superior Court, and could receive more severe punishment on a second trial; however, we implore this Court to give serious consideration to the points which have been made to the end that irrespective of the further outcome, Ralph Carnes be given a chance to have effective assistance of counsel. Effective assistance, in the mind of the scrivener of this instrument, means at least a counsel who has had time to find out the factual evidence which will be presented against the dedendant in the criminal case, as civil defendants have an opportunity to do under the laws of Georgia. It further means the opportunity to have a counsel who has had sufficient time to investigate and research the law involved and to have available witnesses who can substantiate the defendant's position. This time will vary, as does the number of criminal cases tried in the courts of Georgia. Each case must truly be decided on its own facts. In this case, to allow this decision to stand under the facts and circumstances enunciated by counsel at the time of the motion for new trial show that this case is one in which additional time should have been given. Reasons such as "If a continuance were granted in this case, indictments would have to be presented on one week and then there would have to be a week's delay in trials during another week" are invalid reasons for not granting a continuance in this case or any other case. They are reasons for changing the procedure, and not reasons for not allowing continuances when they are justified. If counsel's opinion, when stated in detail that additional time should be granted, is a conclusion, it would appear

that it is a conclusion in a field in which he is somewhat expert, and one in which he is probably the only one that really knows in its fullest context.

It is respectfully submitted that for all of the reasons aforesaid that serious consideration should be given by this Court to the granting of a Writ of Certiorari to the Court of Appeals of Georgia.

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APPENDIX I.

OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA.

42495. CARNES v. THE STATE B-7

1. Under the facts and circumstances of this case the trial judge did not err in denying the defendant's motion for a continuance of the trial.

2. The indictment sufficiently alleged that the principal offender was unknown to the grand jury. The trial was authorized by Code 26-2621.

3-4. The court did not err in admitting the state's exhibits or the statement discussed in these divisions of the opinion.

5. The objections to the judge's charge were not properly taken under the Appellate Procedure Act of 1965 as amended.

6. The trial court did not err in failing to give in his instructions to the jury the written requests of the defendant since the substance of the requests was included in the charge.

7. The court did not err in admitting the oral and photographic evidence considered in this division of the opinion.

The defendant was indicted and convicted of the offense of receiving stolen goods. The indictment was essentially in the language of Code §26-2621

and alleged that the defendant had received stolen goods from some person or persons to the grand jurors unknown. The defendant employed counsel on March 12, 1966 and was placed on trial on March 15, 1966.

Error is enumerated on the trial judge's denial of the defendant's motion for a continuance of the trial and on numerous other grounds.

BELL, Presiding Judge. 1. Error is enumerated on the failure of the trial judge to grant the defendant's oral motion for a continuance of the trial. The substance of the motion was that counsel had not had sufficient time to investigate and prepare the defense. No evidence, only argument of counsel, was offered at the hearing. Thus to a large degree the motion amounted to nothing more than contentions of counsel based on unsupported suppositions and conclusions. To that extent the motion is defective. "The bare statement in the motion to continue, that appointed counsel had not had sufficient time to investigate and prepare the defense, was a mere conclusion. Questions of this nature must of necessity be entrusted to the discretions of the trial judge". Smith v. State, 198 Ga. 849, 852-853 (33SE2d 338).

The record does reveal that the time of counsel's preparation for trial was short. Mere shortness of time, however, does not ipso facto show a denial of the rights of an accused. Something more is required. "An examination of the decisions of this court will demonstrate that the broad discretion

given to the presiding judge in granting or refusing to continue trials is not to be disturbed unless manifestly abused . . . Whether or not a reversal is to be adjudged because counsel were not allowed sufficient time to prepare the case for trial is to be determined by the particular facts and circumstances of each case." Cannady v. State, 190 Ga. 227, 228-229 (9 SE2d 241). It appears from the cases that the courts have considered these "facts and circumstances" to embrace not merely those attendant at the hearing on the motion but also those which the entire record discloses. While no precise rule emerges from the numerous decisions, it is apparent that it is only where the record reveals to the appellate courts facts or circumstances showing as a matter of law identifiable prejudice to the accused, such *as where events have moued so swiftly that constitutional guaranties are overridden,* that the reviewing courts are authorized to reverse the trial court's refusal to grant an extension. See Fair v. Balkcom, 216 Ga. 721 (119 SE2d 691). The record here contains no evidentiary facts showing identifiable prejudice or recital of official events tending to suggest an abridgement of the defendant's constitutional rights. In that status the trial judge's discretion must not be disturbed. Enumerations 5, 6, 7 and 10 have no merit.

2. The defendant argues that the *time* of his trial and consequently his conviction was improper since the principal thief was known at the *time of trial.* It is, of course, true that "one charged with buying or receiving goods, knowing them to have been stolen, can not be indicted or punished until

after the conviction of the principal offender, or until it appears that the principal offender can not be taken so as to be prosecuted and convicted" Smiley v. State, 23 Ga. App. 317 (98 SE 125). However, the record here shows no knowledge on the part of anyone as to the identity of the principal. The indictment itself, couched in the language of Code 26-2621, reads in part that the defendant did "buy and receive from some person or persons to the Grand Jurors unknown so that the said person or persons might be taken and prosecuted to conviction . . . the said property herein described having been feloniously stolen by some party to the Grand Jurors unknown . . ." In the light of this language the presumption is that the grand jury and the prosecutor properly performed their duty and did not know or discover the identity of the principal. Further, all witnesses interrogated on the point testified that they did not know the identity of the principal. The testimony of the Sheriff, based as it was on heresay revealed to him after the indictment, that an un-named person *whose whereabouts were unknown* to him, was suspected of being a principal, had no probative value and did not render the time of trial improper. Enumerations 1, 4 and 11 have no merit.

3. Enumerations 3, 8, 14, 16, 17 and 24 all assert error on the court's admitting in evidence certain exhibits offered by the State listing the merchandise stolen and containing a statement signed by the defendant as follows: "This is to certify that all the merchandise on the invoice was stolen from Alterman Foods and purchased by me". The ob-

jection is that the statement, being tantamount to a confession, was allowed in evidence without any showing that it was made voluntarily and without being induced by the slightest hope of benefit or remotest fear of injury. These enumerations have no merit.

In response to questions asked by the solicitor, Sheriff Potts testified that at no time had he promised immunity to the defendant nor had he conversed with anyone regarding any contact with the solicitor. Further, Sheriff Potts testified that while he (Sheriff) was in the defendant's store in an adjoining county and while waiting for officials of that county to arrive, he told the defendant he was investigating incidents regarding a truck "stolen in Atlanta" but that he (Sheriff) was "on the wrong side of the river" and "I got nothing to do with it over here. I'm just waiting here." The sheriff then testified that the defendant had said "I wished I'd let that stuff alone. I don't want to get into any trouble. I knew I shouldn't have bought it. I can swear I wished I had left there and went to the ball game. I bet I don't ever buy anything else". On cross examination, Sheriff Potts was asked, "Mr. Carnes cooperated throughout this thing and didn't try to hide anything from you?" and testified ". . . I told him [defendant] why I was waiting there. He hesitated, not a long time, but a short time, and then that's the statement he made to me." Another witness, Hunt, a representative of the owner of the stolen property, on cross-examination was asked "Did he [defendant] at anytime try to hide any of this thing, or was he fairly open about it, or tell

you all about it?" Answering, Hunt testified, "He [defendant] said, 'I want to right a wrong that I did'. He said, 'I don't know why I done it". Hunt, on cross examination, questioned if he had led the defendant to believe no prosecution of defendant would occur if defendant assisted "in this thing", testified "No, sir". Also on cross examination, Hunt testified that the defendant openly and without hesitation helped inventory all "the stuff" in defendant's store and that defendant himself suggested that it would be better if he [defendant] would "just go ahead and pay for it." Previously, on direct examination the witness Hunt had identified the merchandise listed in the exhibits as stolen property and testified that he (Hunt) witnessed the defendant's signature to the statement.

Significantly, all of the foregoing testimony either was admitted without objection or was adduced on cross examination. Of importance is the fact that the circumstances surrounding the making of these oral statements by the defendant as well as his signing of the written one, as gleaned from the testimony of Hunt and Sheriff Potts as well as from the unsworn statement of the defendant himself, show that the defendant was not in custody, was in no manner restrained, and was not subjected to official interrogation.

It is thus to be seen not only that a proper foundation was laid for the introduction of the exhibits, but also that substantially the same evidence in the form of oral testimony was admitted without objection, or on cross examination, and for that rea-

son, even if the admission of the exhibits otherwise would have been improper, under the facts of this case, that alone would not require a reversal. Whippler v. State, 218 Ga. 198, (126 SE2d 744); Pierce v. State, 212 Ga. 88, (90 SE2d 417); Cooley v. Bergstrom, 3 Ga. App. 496 (2) (60 SE 220); Bennett v. George, 105 Ga. App. 527, 536 (125 SE2d 122).

4. Enumerations 2, 3, 6, 16 and 17 all object to the admission in evidence of the state's exhibit referred to in division 3 above on the grounds that the defendant was denied counsel and was not informed of his right to remain silent "before he was questioned and asked to sign statements".

It is certainly true that the Supreme Court of the United States in recent decisions has made it clear that it will protect the rights against self-incrimination of citizens taken into custody or otherwise restrained who are suspected or accused of crime. In annunciating its policy, the Supreme Court has set stringent criteria for procedural safeguards to be employed to protect the privilege and has held that these criteria apply equally to State as well as Federal law enforcement officials. See Escobedo v. Illinois, 378 U.S. 478, 12 Led 2d 977, 84 S. Ct. 1758; Miranda v. Arizona 384 U.S. 436, 16 L ed 2d 694, 86 S. Ct. 1602.

The prolix opinions in Escobedo and Miranda deal primarily with in-custody interrogation although undoubtedly their holdings apply to the questioning of a suspect at any place after an investi-

gation has become accusatory. The holdings, however, are limited to *state action* and do not attempt to proscribe the efforts of private citizens to enforce their private property rights by private investigation or interrogation. While private investigation may be so conjunct with that of government as to be inseparable, whether that is so or not must depend on the facts of each case.

Here the record shows only that the invoices listing the stolen merchandise and containing the statement signed by the defendant was prepared by the representative of the owner of the property. These representatives were not governmental officials. The invoices and the statement were identified only by Hunt, a representative of the owner. Only Hunt testified as to witnessing the signing of the statement by the defendant. The record does not show that the sheriff or any other governmental agent participated in either the preparation or the signing of the statement. Further, at the time of the signing, the record discloses that the defendant was not in custody, was not restrained, and was not under compulsion to affix his signature. In that status, this statement, an incriminating one whether amounting to a confession or not, was admissible even under the holdings of Escobedo and Miranda.

In Miranda at p. 726, 16 L. ED. 2d, these statements are made: "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence . . . Volunteered statements of any kind are not barred

by the Fifth amendment and their admissibility is not affected by our holding today".

5. Enumerations 21, 22 and 23 each relates to asserted errors in the Court's charge to the jury. The record, however, makes it clear that none of these objections was raised in the trial court in the manner demanded by the amendment of 1966 (Sec. 6, 1 Ga. Laws 1966, pp 493-501) to the Appellate Procedure Act of 1965 (Ga. Laws, 1965, p. 18). See Georgia Power Co. v. Maddox, 113 Ga. App. 642 (1) (2) (149 SE2d 393). These enumerations present nothing for review.

Until amended by the Act of 1966, Section 17 of the Appellate Procedure Act of 1965 did not apply to instructions of the court in criminal cases. The amendment became effective on March 15, 1966. This case was tried on March 22, 1966. All persons, of course, are presumed to know the law. However, in view of the closeness of the effective date of the amendment to that of trial, the possibility exists that neither the court nor counsel may have been aware of the change in the law. Because of that possibility, this court has exercised the perogative granted it by subsection (c) of Section 17 of the Appellate Procedure Act of 1965 (Code Ann. Sec. 70-207 (c)) and reviewed the charge of the court and concluded that it contains no substantial error harmful to defendant as a matter of law.

6. Enumerations 19 and 20 each objects to the failure of the trial judge to give in his instructions

to the jury written requests of the defendant in the language requested. Code Sec. 70-207 as amended (Acts 1853-4, p. 46; 1878-9, p. 150; 1937, p. 592) was specifically repealed by the Appellate Procedure Act of 1965 (1 Laws 1965, pp. 18-40, @ p. 39) and replaced by Sec. 17, Acts 1965, p. 18 as amended by the Act of 1966, pp. 493-498. See Code Ann. (Supp) 70-207. Thus, on this point, cases such as Vaughan v. Vaughan, 212 Ga. 485, 486 (1) (93 SE2d 743), based as they were strictly on the language of the statute repealed, are no longer expressive of the law. The result is the return of the law to that stated by Mr. Justice Nisbet in Long v. State, 12 Ga. 293 @ p. 323 as follows: "We hold, that the Court is not bound . . . to instruct in the language of a request, or in immediate response to it, if in substance at any time the instruction desired is given."

We have examined the instructions of the trial judge in toto and in minutia with relation to the defendant's requests. From this it is quite apparent that the contents of requests numbered 3 and 4 were amply covered by the judge's instructions.

7. Enumerations 13 and 15 object to the admission in evidence of photographs of a truck and of oral testimony regarding the truck.

"From early times the Georgia Supreme Court has followed a liberal policy toward the allowance of photographic evidence". Cagle Poultry & Egg Co. v. Busick, 110 Ga. APP. 551, 552 (a) (139 SE2d 461). The photographs here were properly identified by preliminary proof as showing an ac-

curate representation of the truck which hauled the stolen goods in question and thus were material to the issues of the case. They were properly admitted in evidence. Johnson v. State, 158 Ga. 192 (2); (123 SE 120); Bryan v. State, 206 Ga. 73 (2) (55 SE2d 574); Hill v. State, 201 Ga. 300 (6) (39 SE2d 675).

The oral testimony objected to was germane to the burden required of the State in proving that the merchandise hauled in the truck was stolen, in properly identifying the stolen property, and in showing that the stolen property was in the possession of the defendant.

The evidence in the case authorized the verdict.

The judgment is affirmed.

Jordan and Jannell, JJ., concur.